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Federal Communications Commission

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	MM Docket No. 93-270
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	RM-8323
FM Broadcast Stations.	)	RM-8339
(Cordele, Dawson, Montezuma,	)	RM-8428
Nashville, Hawkinsville, Cusseta,	)	RM-8429
Cuthbert, and Leary, Georgia)	)	RM-8430

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: June 25, 1997****Released: July 11, 1997**

By the Chief, Allocations Branch

1. The Commission has before it a *Notice of Proposed Rule Making and Order to Show Cause* ("Notice"), 8 FCC Rcd 7672 (1993), issued in response to two interrelated petitions for rule making filed by Radio Cordele, Inc. ("RCI") (RM-8323), licensee of Station WKKN(FM), Channel 252A (98.3 MHz), Cordele, Georgia, and by John F. Tuck and Phonson Donaldson, Bankruptcy Court Appointed Receivers for Dawson Broadcasting Company ("DBC") (RM-8339), licensee of Station WAZE(FM), Channel 251A (98.1 MHz), Dawson, Georgia.

2. In the first petition for rule making, RCI proposed the substitution of Channel 236A (95.1 MHz) for Channel 252A at Station WKKN(FM), the modification of its license to operate on Channel 236A, and, to accommodate that proposal, the substitution of Channel 290A (105.9 MHz) for Channel 236A at Montezuma, Georgia. DBC proposed in the second petition the upgrade of Station WAZE(FM) by substituting Channel 251C3 for Channel 251A at Dawson, and the modification of the station's license accordingly. In order to accommodate its proposal, DBC proposed a pattern of substitutions identical to that proposed in RCI's rule making petition, *i.e.* the substitution of Channel 236A for Channel 252A at Cordele and the substitution of Channel 290A for Channel 236A at Montezuma.

3. In response to the *Notice*, three counterproposals were filed: by DBC (RM-8430); by the Tri-County Broadcasting, Inc., licensee of WQSY(FM), Channel 280C3 (103.9 MHz), Hawkinsville, Georgia, jointly with Montezuma Broadcasting ("Tri-County-Montezuma") (RM-8429); and by the Tifton Broadcasting Corporation ("Tifton") (RM-8428), licensee of Station WJYF(FM), Channel 237C3 (95.3 MHz), Nashville, Georgia.<sup>1</sup>

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<sup>1</sup> These counterproposals were placed on Public Notice on January 28, 1994. Report No. 1997.

4. DBC's counterproposal consists of three options. Option I proposes to upgrade Station WAZE(FM) at Dawson by substituting Channel 251C3 for existing Channel 251A, reallocating Channel 251C3 from Dawson to the community of Leary, Georgia, and modifying the license for Station WAZE(FM) to operate on Channel 251C3. DBC also requests the same accommodating substitutions proposed in its initial rule making petition, *i.e.* Channel 236A for Channel 252A at Cordele and Channel 290A for Channel 236A at Montezuma, with the added alternative substitution of Channel 221A at Montezuma. Option II proposes the same change of community of license proposed in Option I, and the use of current Channel 236A at Montezuma or substitution of either Channel 290A or 221A, which requires no substitution of channels at Cordele. Option III is the identical proposal made in DBC's original rule making proposal (RM-8339). Options I, II, and III are in the numeric order of DBC's preference.

5. Tri-County-Montezuma counterproposed the upgrade of Tri-County Station WQSY(FM), Hawkinsville, Georgia, by substituting Channel 236C2 for Channel 280C3 and modifying its license accordingly, and the upgrade of Channel 236A at Montezuma by substituting Channel 280C3. To accommodate these upgrades, the counterproponents request substitution of Channel 264A for Channel 279A (103.7 MHz) at Cusseta, Georgia, and deletion of then-vacant and unapplied-for Channel 264A allotment at Cuthbert. Tri-County-Montezuma requests that its proposed Channel 236C2-Channel 280C3 substitution at Hawkinsville be regarded as an incompatible channel swap to forestall our consideration of any competing expressions of interest in applying for the proposed C2 channel. The third counterproposal, filed by Tifton, requests the upgrade of Station WJYF(FM), Nashville, Georgia, by substituting Channel 237C2 for Channel 237C3 and modifying its license accordingly.

6. Upon preliminary evaluation of the five proposals before us, we note that DBC's proposals and Tri-County-Montezuma's counterproposal cannot be granted. The license for Dawson Station WAZE(FM), whose upgrade serves as the common, critical feature of each of DBC's proposals, automatically expired as of February 9, 1997 by virtue of Section 403(l) of the Telecommunications Act of 1996. The license for Station WAZE(FM) was canceled because it had been silent for a least one year since February 8, 1996.<sup>2</sup> DBC's petition for rule making and its counterproposal are thereby rendered moot, and will be

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<sup>2</sup> Public notice of the cancellation of WAZE(FM)'s license was released April 3, 1997, and was preceded by a letter of Notification of License Expiration to the licensee dated February 12, 1997. The letter had stated that unless documented evidence were received within 30 days that the station was on-air sometime during the year of presumed silence, the Commission records would be modified to reflect the 1) expiration of the station's license, 2) its cancellation as a matter of law, 3) the deletion of station's call sign, and 4) dismissal of its application for renewal of its license (BRH-960904WA). No such evidence was received.

With the cancellation of WAZE(FM)'s license, Channel 251A is now a vacant allotment at Dawson. We will, therefore, open a window to accept new applications to operate on Channel 251A.

dismissed. Also, the Tri-County-Montezuma counterproposal will not be considered because one of its indispensable and constituent channel substitutions cannot be implemented. The proposed deletion of Channel 264A at Cuthbert is invalid because an individual filed an expression of interest that he intended to apply for a construction permit for that vacant, unapplied-for channel. Our engineering analysis confirms Tifton's engineering statement that no other Class A channel is available at Cuthbert. In accord with longstanding policy, the Commission has refused to delete vacant channels when an expression of interest has been filed. *See e.g., Fond du Lac and Sheboygan, Wisconsin*, 55 RR 2d 592 (1984) and *Montrose and Scranton, Pennsylvania*, 3 FCC Rcd 1061 (1988), *recon. denied*, 4 FCC Rcd 7799 (1989), *rev. denied*, 5 FCC Rcd 6305 (1990). Thus, because Tri-County's counterproposal and its chain of necessary substitutions depend on the Channel 264A substitution at Cusseta and deletion of that channel at Cuthbert, which, of course, is invalid, the counterproposal cannot be realized and will be dismissed. This leaves only the RCI proposal and the Tifton counterproposal to be analyzed and compared and we will do so in the light of the comments regarding each of them.

7. *RCI Comments.* RCI gives continued support for its rule making proposal to substitute Channel 236A for Channel 252A at its Station WKKN(FM) at Cordele, and to modify its license accordingly. RCI had first alleged in its rule making petition that first adjacent channel interference would be caused in neighboring Leesburg and Smithville, Georgia. Later, RCI indicated that it was requesting a change of channel in Cordele for another reason. RCI stated its intent to eventually upgrade Station WKKN(FM) by filing a "one-step upgrade" of Channel 236A. In any event, RCI expressed its interest in the allotment of whatever channel combinations would permit the deletion of Channel 252A at Cordele so that an upgrade of Station WKKN(FM) could be implemented without allowing for competing applications.

8. *Tifton Comments and Replies.* As a part of its comments and counterproposal, Tifton alleges that its proposed Class C2 upgrade of Station WJYF(FM) at Nashville would serve 68,362 more persons than would be served by operating the station as a Class C3 station.<sup>3</sup> On that basis, Tifton asserts, its counterproposal should be preferred over RCI's proposal because the switching of channels at Cordele from Channel 236A to Channel 252A would not permit service to any more people than it presently serves. Tifton claims that the allotment of Channel 236A to Cordele rather than Channel 252A "offers no public interest benefit." Furthermore, argues Tifton, there is no public interest justification in the elimination of alleged interference to the reception of Station WKKN(FM)'s signal in communities outside of Cordele. After reviewing DBC's counterproposal, Tifton commented that it continued to support its own Nashville upgrade and the rejection of the

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<sup>3</sup> Tifton's counterproposal specifically addressed the DBC proposal submitted in its rule making petition, which incorporated a set of accommodating substitutions that are identical to the interrelated rule making petition submitted by RCI. We have, therefore, deemed the Tifton opposition to the DBC counterproposal as an opposition to the RCI proposal as well. Of course, the DBC proposal cannot be implemented because of Station WAZE(FM)'s license cancellation, as we note in para. 6, *supra*.

RCI proposal to change channels in Cordele. In its reply comments, however, while reiterating support of its own proposed upgrade at Nashville, Tifton reverses itself and now supports the substitution of Channel 236A for Channel 252A at Cordele, but with newly proposed sets of coordinates,<sup>4</sup> which would permit fully spaced operation of the Cordele and Nashville proposals. RCI in its replies has agreed to change the coordinates of its Cordele station to clear Nashville.

9. *Discussion.* We will grant Tifton's counterproposal to upgrade Nashville, Georgia Station WJYF(FM) on Channel 237C2, but will deny RCI's rule making petition to change the operating frequency of Cordele, Georgia Station WKKN(FM) from one Class A channel to another. As we noted above, the demise of Station WAZE(FM) removes DBC's proposal and counterproposal from consideration, and the unavailability of a channel substitution critical to the Tri-County-Montezuma's allotment request renders it unworkable. Although dismissal of DBC's proposal and counterproposal and Tri-County's counterproposal leaves RCI's proposal and Tifton's proposed upgrade without conflict, only Tifton's Nashville upgrade will be granted because its resulting service area expansion is in the public interest.

10. RCI has presented no public interest reason for a mere substitution of Channel 236A for Channel 252A, the operating frequency of Station WKKN(FM). While interference may be experienced in Leesburg and Smithville resulting from the then-recent allotment of first adjacent Channel 251A at Dawson, which was claimed to be at a minimum separation distance, there is no protection from interference to any greater degree than that afforded by assignment of stations in accord with the Commission's minimum spacing requirements. See Rule Sections 73.207 and 73.209. In this case, there is an added disqualifying factor: both communities lie outside of the 60 dBu service contour of Station WKKN(FM). The Commission's technical rules do not protect such areas from interference. Therefore, while Smithville and Leesburg may receive Station WKKN(FM)'s signal and some of its programming may be directed to those communities, there is no protection from interference to regions outside of a station's authorized service area.

11. As related above, RCI later states that it wishes to substitute Channel 236A for Channel 252A in order to permit it to later upgrade Station WKKN(FM) and avoid any competition it may encounter in applying to operate on that channel. The Commission has never countenanced a licensee's merely changing its channel to another of the same class so that it can be upgraded on a co- or adjacent channel, at some indeterminate time in the future, and avoid any competition it may encounter by qualifying for treatment under Section 1.420(g). Again, no public interest benefit has been offered by RCI to justify, in essence, reserving a channel for application by the existing licensee and denying the public

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<sup>4</sup> Tifton proposes these coordinates as alternatives to those proposed by DBC for the upgrade of WAZE(FM) in Dawson. Of course, as stated in para. 6, *supra*, the DBC proposals themselves are rendered moot and will not be given further consideration. Tifton also notes that the Tri-County proposal is invalid because it requires the deletion of Channel 264A at Cuthbert, for which an expression of interest was filed, as we also note in para 6.

benefits that might be derived from widening the pool of potential station operators. For all of these reasons, we will deny RCI's proposal to change its channel.

12. *Technical Summary.* Channel 237C2 can be allotted to Nashville, Georgia in compliance with the Commission's minimum distance separation requirements at a site restricted to 6.3 kilometers (3.9 miles) northwest of the community, with reference coordinates of North Latitude 31-15-18 and West Longitude 83-17-08.<sup>5</sup>

13. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 2, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Nashville, Georgia	237C2

14. The window period for filing applications for Channel 251A at Dawson, Georgia, will open on August 25, 1997, and close on September 25, 1997.

15. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Tifton Broadcasting Corporation for Station WJYF(FM), Nashville, Georgia, IS MODIFIED to specify operation on Channel 237C2 in lieu of Channel 237C3, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

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<sup>5</sup> The coordinates for Channel 251A at Dawson are North Latitude 31-44-06 and West Longitude 84-29-01.

16. IT IS FURTHER ORDERED, That the rule making petition (RM-8323) filed by Radio Cordele, Inc. to substitute Channel 236A for Channel 252A at Station WKKN(FM) at Cordele, Georgia, to modify its license to reflect operation on Channel 236A, and, to accommodate its proposal, to substitute Channel 290A for Channel 236A at Montezuma, Georgia is DENIED.

17. IT IS FURTHER ORDERED, That the rule making petition (RM-8339) filed by John F. Tuck and Phonson Donaldson, Bankruptcy Court-Appointed Receivers for Dawson Broadcasting Company to upgrade Station WAZE(FM) at Dawson, Georgia by substituting Channel 251C3 for Channel 251A at Dawson, and modifying its license to reflect operation on Channel 251C3, along with the necessary channel substitutions at other communities, is DISMISSED.

18. IT IS FURTHER ORDERED, That the counterproposal (RM-8430) filed by John F. Tuck and Phonson Donaldson, Bankruptcy Court-Appointed Receivers for Dawson Broadcasting Company, with three different options, the primary of which was to upgrade Station WAZE(FM) at Dawson, Georgia by substituting Channel 251C3 for Channel 251A at Dawson, reallocating Channel 251C3 to Leary, Georgia and modifying its license to reflect operation on Channel 251C3 at Leary, along with the necessary channel substitutions at other communities, is DISMISSED.

19. IT IS FURTHER ORDERED, That the counterproposal (RM-8429) filed by the Tri-County Broadcasting, Inc. to upgrade Station WQSY(FM) at Hawkinsville, Georgia by substituting Channel 236C2 for Channel 280C3 and to modify its license to reflect operation on Channel 236C2, and to upgrade Station WLML(FM) at Montezuma, Georgia from Channel 236A to Channel 280C3, along with the necessary channel substitutions at other communities, is DISMISSED.

20. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

21. For further information concerning the above, contact J. Bertron Withers, Jr., Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
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